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IN THE

Supreme Court of the United States

October Term, 1957

No. 770

A. J. KAHN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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UNITED STATES OF AMERICA,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner, A. J. Kahn, appellant and defendant below, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, made and entered in the above-entitled case on January 8, 1958.

Reference to Opinion Below.

The opinion of the United States Court of Appeals for the Ninth Circuit [No. 15,404] is not yet reported; it is printed in Appendix "A" hereto.

Jurisdiction.

The judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, Central Division, is dated January 8, 1958, and was filed and entered that day.

The jurisdiction of the Supreme Court to review that judgment by writ of certiorari is conferred by Title 28, U. S. Code, Section 1254 (1).

Question Presented.

The principal question presented by this petition is whether a cafe-operator who accepts a total of twenty-nine (29) wagers, in the total amount of $6,930.00, from two old friends, over a seven-month period, is a person "engaged in the business of accepting wagers" within the meaning of Sections 3285 and 3290 of the Internal Revenue Code of 1939 and, therefore, subject to the occupational and excise taxes created and imposed by those Sections.

The Statutes Involved.

The statutes which this case involves are Section 3285 and Section 3290 of the Internal Revenue Code of 1939 [65 Stat. 529] which are set forth in Appendix "B", hereto.

Statement of the Case.

Petitioner was convicted in the United States District Court for the Southern District of California, Central Division, of four counts of a five-count information charging him with wilful failure to pay the taxes imposed by Section 3290 and Section 3285 of the Internal Revenue Code of 1939. The violations were alleged to have occurred in Los Angeles County, California, within the Central Division of the Southern District of California.

The jurisdiction of the United States District Court was based upon Title 18 U. S. Code, Section 3231.

Jury trial was waived by the petitioner and the case was tried before the District Court. Petitioner was convicted (Count I) of wilful failure to pay the occupational tax on wagering imposed by Section 3290, Internal Revenue Code of 1939, and (Counts II, IV and V) of wilful failure to pay the excise tax on wagers imposed by Section 3285, Internal Revenue Code of 1939.

The Court of Appeals affirmed the decision of the District Court. Its opinion is not yet reported but is set forth, *infra,* in Appendix "A" hereto.

Count One charged petitioner with a violation of the statutory requirement (Section 3290 of the Internal Revenue Code of 1939) that a person who is *engaged in the business* of accepting wagers shall pay a special (occupational) tax of $50.00 per year. For this violation he was sentenced to pay a fine of $10,000.00.

Counts Two, Four and Five charged petitioner with violation of the statutory provision (Section 3285 of the Internal Revenue Code of 1939) imposing an *excise tax* of 10% on wagers accepted by persons who are *engaged in the business* of accepting wagers. Petitioner was sentenced to imprisonment for a period of one year on each of Counts Two, Four and Five, the sentences to run concurrently. Execution of the sentences of imprisonment was suspended and petitioner was placed on probation, one of the conditions thereof being that he pay the fine of $10,000.00 assessed on Count One, on or before December 1, 1956.

The evidence presented by the Government at the trial tended to show that during the period from September, 1953, through March, 1954, petitioner accepted wagers on horse races in the total amount of $6,930. This sum

represented the total amount wagered in twenty-nine (29) transactions, twenty-six (26) of which were "placed" by one man and the remaining three (3) were all "placed" by one other man. Both of these men had been personal friends of the petitioner for many years before the time of the wagers. The twenty-nine (29) wagers were "placed" on eighteen days during September and December, 1953, and March, 1954, three months out of the seven-month period.

Petitioner was a man of 64 years who had resided and who had done business in San Diego for about 34 years. At the time of the alleged offenses, 1953-1954, he was actively engaged in business as the manager of five or six restaurants and bars in San Diego which were part of a chain of such establishments which was a family enterprise. [R. 281, 199, 210, 236.] His duties consisted primarily of doing all of the buying for all six of those restaurants and bars, of hiring most of the help, and acting in a supervisory capacity in all of them. [R. 282, 198, 199.]

The evidence established that both of the persons who "placed" bets with petitioner were old friends of petitioner [R. 40-41, 82, 146] and friends of each other [R. 144] until March, 1954, when a disagreement arose between them and petitioner. One of them, Ursich, "placed" 26 of the wagers, between September 4, 1953, and March 18, 1954. The other person, Qualin, "placed" three bets only, all of them at Del Mar race track on September 5, 1953 [R. 140-146.]

With the exception of the Qualin bets, all of the bets were "placed" at a bar-cafe known as "Club Royal," in San Diego,—one of the 5 or 6 such places managed by petitioner. Club Royal was frequented by various book-

makers who often solicited bets from patrons at the bar. [R. 81-82, 126-129, 130, 180, 181, 199-200, 206, 209, 216-219.] The management of Club Royal, including petitioner, tried to run the bookmakers out from time to time but was unsuccessful, and they were good customers and the management "got to tolerate" them. [R. 297-298, 181.] The government's principal witness, Ursich, testified that you could see five or six bookmakers in Club Royal at a given time [R. 130] and that he, personally, placed many bets with them. [R. 81-83, 126-130.]

The betting transactions between petitioner and Ursich were typical of "friendly" or "social" betting; the winner was paid off in cash, no markers were ever used. In this connection Ursich testified, [R. 136]:

"The Court: Did you ever win, Mr. Ursich?

The Witness: Oh, yes; but I never win as much as I lose.

The Court: Well, when you did win, how were you paid off?

The Witness: I was paid off in cash.

The Court: By whom?

The Witness: By Mr. Kahn.

The Court: Were markers used?

The Witness: No, sir; no, sir. Our word was good.

The Court: He never used markers?

The Witness: No, sir. There were times that he owned me as much as $1800 that I didn't collect, and I played it out, lost it." [R. 136.]

Reasons for Allowing the Writ.

1. **In Holding That a Cafe Operator Who Has Accepted a Total of Twenty-nine (29) Wagers, in the Total Amount of $6,930, Placed With Him by Two Old Friends During a Period of Seven (7) Months, Is a Person "Engaged in the Business of Accepting Wagers" Within the Meaning of Sections 3285 and 3290 of the Internal Revenue Code of 1939, the Court of Appeals Below Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be, Settled by This Court.**

The statutes involved are sections of the Internal Revenue Code of 1939. Their provisions have been carried forward into Sections 4401 and following, Chapter 35, of the Internal Revenue Code of 1954. They are still in effect. Their meaning should be settled by this Court.

Petitioner contends that Sections 3285 and 3290 of the Internal Revenue Code of 1939 created and imposed an occupational tax upon persons *"engaged in the business of accepting wagers"* and an excise tax upon the wagers "placed with" persons so engaged, and that the Congress intended that the purpose of the requirement, "engaged in the business of accepting wagers," was to exclude from tax, and from the provisions of those laws, the purely "social" or "friendly" type of bet and to direct the application of those laws to "commercialized gambling." The wagers upon which petitioner's convictions were based were, at most, of the purely "social" or "friendly" type; he was not "engaged in the business of accepting wagers" and he was not required to pay either the occupational tax or the excise tax on the wagers placed with him. Therefore, petitioner stands convicted of four "crimes" which never have been committed.

The construction which has been placed upon the statutes involved by the decisions of the courts below has created new and different crimes,—constructive crimes,—which the Congress never intended to be created.

It is clear that the Congress intended that the statutes involved and the taxes they created, should apply only to "commercialized gambling" and that the purely "social" or "friendly" type of bet should be excluded from the tax. The Senate and House Reports on the Revenue Act of 1951, of which the statutes involved were a part, contain the following language:

> "*Commercialized gambling* holds the unique position of being *a multibillion dollar, nationwide business* that has remained comparatively free from taxation by either State or Federal Governments. This relative immunity from taxation has persisted in spite of the fact that wagering has many characteristics which made it particularly suitable as a subject for taxation. Your committee is convinced that the continuance of this immunity is inconsistent with the present need for increased revenue, especially at a time when many consumer items of a seminecessity nature are being called upon to bear new or additional tax burdens."
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> * * * * * * * * * *
>
> "Wagers on sports events or contests, to be taxable, *must* be placed with a person *engaged in the business* of accepting such wagers. *The purpose of this requirement is to exclude from the tax the purely 'social' or 'friendly' type of bet.* A person is considered to be in the business of accepting wagers if he is engaged as a principal who, in accepting wagers, does so on his own account. The principals in such transactions are commonly referred to as 'bookmakers,' although it is not intended that any

technical definition of 'bookmaker,' such as the maintenance of a handbook or other device for the recording of wagers, be required. It is intended that a wager be considered as 'placed' with a principal when it has been placed with another person acting for him. Persons who receive bets for principals are sometimes known as 'bookmakers' agents' or as 'runners.' It is not intended that to be 'engaged in the business of accepting such wagers' a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged as a salesman, and also, for the purposes of this tax, be engaged in the business of accepting wagers." [Emphasis added.]

U. S. Code Cong. Service, 1st Sess., 82nd Cong., 1951, House Report, pp. 1838-1839.

See also:

Senate Report, pages 2090-2091.

There have been few reported decisions to guide the trial courts in their interpretation of the pertinent language in the statutes involved, *viz., "engaged in the business"* of accepting wagers. Certain decisions of the Court of Appeals for the Fifth Circuit make it clear that, in that circuit at least, the statutes involved, and their taxes, are construed as applying only to "commercialized gambling."

Hodges v. United States, 5 Cir. 1955, 223 F. 2d 140, 143;

Sagonias v. United States, 5 Cir. 1955, 223 F. 2d 146, 147.

In the decisions mentioned the transactions upon which the convictions were based were clearly parts of "commercialized gambling" activities and the court was not

required to construe the language, "engaged in the business of accepting wagers."

On the other hand, there is an obviously correct decision of the United States District Court for the District of Rhode Island holding that ". . . the acceptance of a single wager does not make the acceptor subject to this tax, or subject to a penalty for not paying the tax. . . ." *United States v. Forys,* D. C. R. I. 1953, 113 Fed. Supp. 580, 582. The *Forys* decision is of little or no help to the courts which must construe the language of the statutes involved.

In bringing prosecutions under the statutes involved the government officers charged with that responsibility have followed an understandable, though not acceptable, tendency to expand the application of these statutes so as to sweep all wagers, all wagering, and all persons connected with wagering within their provisions, *e. g., United States v. Forys,* D. C. R. I. 1953, 113 Fed. Supp. 580; *United States v. Calamaro,* 1957, 354 U. S. 351, 1 L. Ed. 2d 1394, 1399, 77 S. Ct. 1138. In *Calamaro* this court said (P. 357):

> ". . . Congress did not choose to subject all employees of gambling enterprises to the tax and reporting requirements, but was content to impose them on persons actually 'engaged in receiving wagers.' Neither we nor the Commissioner may rewrite the statute simply because we may feel that the scheme it creates could be improved upon."

In the reported decisions the Courts of Appeals have demonstrated that they are vague and uncertain as to the meaning and application of the pertinent language, "engaged in the business of accepting wagers." In this

case the Court of Appeals, in its decision, said [R. 337; Appendix A]:

> "Though the statutes involved in this appeal are relatively new, and 'engaged in business' is not fully defined as used in them, there is no reason to believe that the definition in relation to the acceptance of wagers should vary greatly from the construction of that phrase as used in other revenue statutes. These definitions have attributed such elements to the 'carrying on' or 'engaging in' a business, as intent, profit, consumption of time, occupation of attention, etc., but have not found any of these items to be completely controlling over all the other elements.
>
> "In *Morton v. Commissioner of Internal Revenue*, 174 F. 2d 302, 303, the Second Circuit said, in conjunction with the determination of the meaning of 'carrying on a trade or business' as it appears in §23(a)(1) I. R. C. of 1939, the predecessor of 26 U. S. C. A. §162(a):
>
> "'Whether the activities of a taxpayer constitute carrying on a trade or business is a question of fact the determination of which by the Tax Court, if adequately supported by the record is ordinarily conclusive on appeal.'"

In *United States v. Simon*, 7 Cir. 1957, 241 F. 2d 308, 310, the defendant contended that the word "business" as used in this statute should be given its ordinary meaning,—that it should refer to an activity in which a person, with continuity, spends a great portion of his time, and *out of which he expects to earn his livelihood or obtain a profit*. The Court of Appeals rejected that interpretation and restricted the meaning of the word to a narrow, exclusionary, purpose, saying:

> "The purpose of the language 'engaged in the business of accepting wagers' was to exclude from

coverage of the Act only bets of the 'purely "social" or "friendly" type.' There is no indication that any other type of wager was excluded. Conversely, the language was intended to include wagers accepted by a principal on his own account, irrespective of whether he was primarily or only incidentally engaged in the acceptance of wagers."

Petitioner submits that the language, "engaged in the business," has a clear, definite and well established meaning when used in our revenue laws. The statutes involved are revenue measures. In other decisions, construing the same statutes, the Supreme Court of the United States has held:

> "The statute was passed, and its constitutionality was upheld, as a revenue measure, *United States v. Kahriger*, 345 U. S. 22, 97 L. Ed. 754, 73 S. Ct. 510, and, apart from all else, in construing it we would not be justified in resorting to collateral motives or effects which, standing apart from the federal taxing power, might place the constitutionality of the statute in doubt. See *id.* 345 U. S. at 31."
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> *United States v. Calamaro*, 1957, 354 U. S. 351, 1 L. Ed. 2d 1394, 77 S. Ct. 1138.

This court has long since adopted and settled the meaning of the term "business," when used in revenue laws, as "that which occupies the time, attention, and labor of men *for the purpose of a livelihood or profit.*" See: *Von Baumbach v. Sargent Land Co.* (1916), 242 U. S. 503, 514, 61 L. Ed. 460, 467, as follows:

> "Were the respondents carrying on business, within the meaning of the Corporation Tax Act? This question was dealt with by this court in the first of the Corporation Tax Cases, *Flint v. Stone Tracy Co.*, 220 U. S. 107, 55 L. Ed. 389, 31 Sup. Ct. Rep. 342,

> Ann. Cas. 1912B, 1312. As the tax was there held to be assessed upon the privilege of doing business in a corporate capacity, it became necessary to inquire what it was to do business, and this court adopted with approval the definition judicially approved in other cases, which included within the comprehensive term 'business' 'that which occupies the time, attention, and labor of men *for the purpose of a livelihood or profit.*'" (Emphasis added.)

The above definition of "business" has been adopted by the United States Court of Appeals for the Ninth Circuit, see:

> *Richards v. Commissioner* (9th Cir., 1936), 81 F. 2d 369, 371-372;
>
> *Section Seven Corp. v. Anglim* (9th Cir., 1943), 136 F. 2d 155, 157-158.

The same rule has been adopted by each of the other Circuits, by the State of California (*Union League Club v. Johnson* (1941), 18 Cal. 2d 275), and seems to be the rule throughout the land. See authorities collected at 12 *Corpus Juris Secundum*, page 767.

In the case at bar there was no evidence whatever that petitioner was "engaged in the business of accepting wagers." Therefore, the District Court and the Court of Appeals below erred in finding and deciding that the petitioner was a person so engaged and subject to the requirements of the statutes involved in this petition.

Conclusion.

There have already been many prosecutions brought under the statutes involved. These statutes have been re-enacted in the Internal Revenue Code of 1954 and are still in effect. There is as yet no clear and settled definition of the critical phrase, "engaged in the business of accepting wagers." That definition is an important question of federal law which has not been, but should be, settled by this court, in order that (1) individual persons who are inclined to place or take bets as a form of diversion may know, with reasonable certainty, whether their conduct subjects them to the provisions of the statutes involved and, (2) so that there will be clear and settled rules for the guidance of the enforcement officers and the courts who will be called upon to enforce and apply these laws.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES H. CARR,

GEORGE E. DANIELSON,

By GEORGE E. DANIELSON,

Attorneys for Petitioner.

APPENDIX "A."

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

A. J. Kahn, Appellant, vs. United States of America, Appellee. No. 15,404, Jan. 8, 1958.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: BONE, LEMMON and CHAMBERS, Circuit Judges.

BONE, Circuit Judge.

This is an appeal from a judgment of the lower court finding appellant Kahn guilty on four counts of a five count Information. Jury trial was waived by appellant and the case tried before the District Court.

Count One charged appellant with violation of the statutory requirement (Section 3290 of the Internal Revenue Code of 1939) that a person *who is engaged in the business of accepting wagers* shall pay a special (occupational) tax of $50 per year. For this violation he was sentenced to pay a fine of $10,000.[1]

The court found appellant not guilty on Count Three of the Information.

The remaining counts, Two, Four and Five, charged him with failure to pay an *excise tax* of 10% on the

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[1]From the Information—Count One—"During the tax year beginning July 1, 1953, and ending June 30, 1954, . . . defendant A. J. Kahn engaged in the business of accepting wages . . .; by reason of such activity he was required by law to pay the occupational tax (wagering) as imposed by Section 3290 of the Internal Revenue Code, 1939, . . . and, well knowing these facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

amount of wagers under Section 3285 of the 1939 Code for the months of September, 1953, December, 1953, and March, 1954.[2] This tax is imposed on the *amount of wagers accepted* by persons who are *engaged in the business of accepting wagers*. He was committed to the custody of the Attorney General for a period of one year on *each* of Counts 2, 4, and 5, these periods of custody to run *concurrently*, and execution was suspended. Probation, under such "custody," was granted for a period of three years on the condition that appellant pay the fine assessed on Count One, on or before December 1, 1956.

The evidence presented by the Government and sustained by the trial court in its special findings of fact, tended to show that during the three different months pertinent to this appeal, appellant *accepted wagers* on horse races in the total amount of $6,930. This amount repre-

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[2]From the Information—Count Two—"During the month of September, 1953, . . . defendant A. J. Kahn engaged in the business of accepting wagers . . . and did accept wagers . . . upon which wagers there was due and owing . . . an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, . . . which he was required by law, . . . to pay . . .; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

Court Four—"During the month of December, 1953, . . . defendant . . . engaged in the business of accepting wagers . . ., and did accept wagers . . . upon which wagers there was due and owing . . . an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, . . . which he was required by law, . . ." to pay . . .; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

Count Five—"During the month of March, 1954, . . . defendant . . . engaged in the business of accepting wagers . . ., and did accept wagers . . ., upon which wagers there was due and owing . . . an excise tax on wagers as provided in Section 3285 of the Internal Revenue Code, 1939, . . . which he was required by law, . . . to pay . . .; and, well knowing all the foregoing facts, the defendant did wilfully and knowingly fail to pay said tax . . ."

sented the total amount wagered in some twenty-nine transactions, three of which were "placed" with appellant by one man and the remaining twenty-six were all "placed" with him by another individual.

The persons liable to pay both the occupational tax imposed by Section 3290, and the excise tax imposed by Section 3285 of the Internal Revenue Code of 1939, are those who are "engaged in the business of accepting wagers." 26 U.S.C.A. (I.R.C. 1939) §3285(d). The primary question raised by this appeal is whether, under the facts stated above, appellant was "engaged in the business" as required by the Code Sections under which he was convicted.

We believe that the lower court's findings that he was so engaged must be upheld.

Though the statutes involved in this appeal are relatively new, and "engaged in business" is not fully defined as used in them, there is no reason to believe that the definition in relation to the acceptance of wagers should vary greatly from the construction of that phrase as used in other revenue statutes. These definitions have attributed such elements to the "carrying on" or "engaging in" a business, *as* intent, profit, consumption of time, occupation of attention etc.,[3] but have not found any of these items to be completely controlling over all the other elements.[4]

In Morton v. Commissioner of Internal Revenue, 174 F. 2d 302, 303, the Second Circuit said, in conjunction

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[3]Morton v. C.I.R., 174 F. 2d 302, (2d Cir.) cert. den. 338 U. S. 828; Cecil v. C.I.R., 100 F. 2d 896 (4th Cir.).

[4]For example: Cecil v. C.I.R., supra. Intent is important in determining whether a taxpayer is carrying on a business but not necessarily controlling.

with the determination of the meaning of "carrying on a trade or business" as it appears in §23(a)(1) I.R.C. of 1939, the predecessor of 26 U.S.C.A. §162(a):

> "Whether the activities of a taxpayer constitute carrying on a trade or business is a question of fact the determination of which by the Tax Court, if adequately supported by the record is ordinarily conclusive on appeal."

This Court in the recent case of Ramsey v. United States, 245 F. 2d 295, was confronted with a somewhat similar problem. We there indicated that with relation to giving a required bond *to carry on* "the business of a distiller," or to "engage in the business of a distiller," the term "business," as used in the statute, is a word of common usage which needed no formal definition to the jurors.

In applying the reasoning in the above noted cases to the facts in evidence in the case at bar, we are forced to conclude that these facts were sufficient to justify the trial court in determining that appellant was "engaged in the business" of accepting wagers (within the meaning of 26 U.S.C.A. (I.R.C. 1939) §3285(d)).

We are not here dealing with a case wherein the evidence indicated only a single isolated wager which might require, as a matter of law, a finding that the acceptor was not engaged in the gambling business,[5] nor are we concerned with a full-time book-making operation which would require an opposite finding. The evidence presented indicated a continuing relationship between appellant and at least one bettor which included a reasonably large num-

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[5]United States v. Forys, 113 Fed. Supp. 580, 582.

ber of transactions. There was also evidence to the effect that appellant went out of his way to accept wagers from one of the Government's witnesses. It is conceivable that such a relationship would be one of simple social betting, but it is equally, if not more, conceivable that such evidence shows the actions of one engaged in the business of accepting wagers. The difference is largely one of the intention of parties involved—an intention far more easily and reliably determined by a competent trial judge with his opportunity to observe the demeanor of the witnesses, than by this Court.

The portions of the evidence urged by appellant as militating against the findings of the lower court are not of such importance as to allow this Court to upset those findings. The fact that a man is engaged in one form of employment does not preclude him from being engaged in some other pursuit or endeavor at the same time. Nor do the facts that he has very few customers and does not attempt to limit his competition, even though he has the power to do so, force a court to conclude that he is not engaged in a particular business. This is particularly true in the business of accepting wagers where the risks are such as to cause many operators to limit the amount of their business for fear of a crippling loss should their customers win.

Appellant objected to the trial court's inclusion in its special findings of fact of the three bets placed with appellant by Qualin, the individual who, according to the Government's evidence, placed only three bets with appellant. The objection was on the ground that 26 U.S.C.A. (I.R.C. 1939) §3285(e) specifically excludes wagers placed with a parimutuel wagering enterprise. This claim is not persuasive. The fact that the bets were made at

a race track, and that a parimutuel enterprise was there available for the use of bettors, does not bring the Qualin bets within the exclusions from the tax. Section 3285(e) excludes those wagers which are placed with a parimutuel enterprise. The evidence in this case could be fairly interpreted as showing that the wagers objected to were placed *with* appellant even though they were placed *at* the race track.

The judgment of the trial court is affirmed.

(Endorsed:) Opinion. Filed Jan. 8, 1958.

Paul P. O'Brien, Clerk.

APPENDIX "B."

The Statutes Involved.

[Excerpts from the Internal Revenue Code of 1939 (Title 26 U. S. Code)].

SUBCHAPTER A—TAX ON WAGERS.

§3285. Tax

(a) Wagers. There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

(b) Definitions. For the purposes of this chapter—

(1) The term "wager" means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

(2) The term "lottery" includes the numbers game, policy, and similar types of wagering. The term does not include (A) any game of a type in which usually (i) the wagers are placed, (ii) the winners are determined, and (iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and (B) any drawing conducted by an organization exempt from tax under section 101, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) Amount of wager. In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary, that an amount

equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(d) Persons liable for tax. Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

(e) Exclusions from tax. No tax shall be imposed by this subchapter (1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and (2) on any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 3267.

(f) Territorial extent. The tax imposed by this subchapter shall apply only to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (A) with a person who is a citizen or resident of the United States, or (B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §471(a), 65 Stat. 529.

SUBCHAPTER B—OCCUPATIONAL TAX.

§3290. Tax

A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable. Added Oct. 20, 1951, 2:07 p. m., E. S. T., c. 521, Title IV, §471(a), 65 Stat. 529.